

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

OVERVIEW

House Bill 1415 requires the Hotel Motel Tax Performance Review Board to conduct a thorough and complete investigation of the city of Port Wentworth's and the Port Wentworth Chamber of Commerce's expenditures of the hotel motel tax revenues, and their compliance with related state laws and regulations. The Bill further requires that the findings resulting from this investigation be disclosed by the Performance Review Board in a written report that includes appropriate evaluations, judgments, and recommendations. The recommendations in the report regarding corrective action to be taken by the city will then be submitted to the Commissioner of the Department of Community Affairs (DCA) for consideration.

As the State administrative agency responsible for conducting this review on behalf of the Performance Review Board, DCA's Office of Research, has examined relevant documents and developed the following report for the Review Board's consideration.

The complaint filed against the city of Port Wentworth and the Port Wentworth Chamber of Commerce was submitted by eight hotel owners in the city. Their cover letter states that for a number of years they have been trying to change the way the hotel motel tax revenue is being expended through chamber. (*See Supplemental Document 1*)

The primary focus of the complaint involves two issues. One involves the chamber's use of the part of hotel motel tax revenue (that is restricted for the "promotion of tourism convention and trade shows") to pay for the construction and installation of exit ramp lighting, street lights, and related electricity costs where all of the city's hotels/motels are located. The second issue involves the chamber's annual \$15,000 donation to the city from the hotel motel tax revenue (originally given to the chamber by the city) to help pay for *Stand Up For America Day*, a local one-day celebration, including a parade, meant to give citizens a chance to show their patriotism.

While the complaint focuses primarily on two specific issues, as required by House Bill 1415, our review was more comprehensive, addressing not only these specific issues, but also broader issues regarding the city's compliance with related state laws and regulations. This involved looking at the city of Port Wentworth's and the Port Wentworth Chamber of Commerce's hotel motel tax budget plans, annual contributions made by the city to the chamber, specific contract services promised and delivered, and whether the nature of these services met/meet the restrictive definition of promoting tourism, conventions, and trade shows.

This report begins with a discussion of the two **primary issues** expressed in the complaint. It then discusses **other compliance issues**, and concludes with specific **corrective action recommendations**.

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

PRIMARY ISSUES

Ramp/Street Lights Expenditures

This part of the complaint questions the legality of hotel motel tax expenditures made through the Port Wentworth Chamber of Commerce (using revenues that are restricted for the “promotion of tourism convention and trade shows”) to pay for the construction and installation of exit ramp lighting and street lights (and related electricity costs) on the main highway along which the city’s motels are located.

The City of Port Wentworth levies their tax based on the authorization provided in code section 48-13-51(a)(3.2). (*See Supplemental Document 2*) This code section requires the city to expend 33 1/3% of the total taxes collected for the purpose of “promoting tourism, conventions, and trade shows” under a contract with a private sector nonprofit organization. “Promoting tourism, conventions, and trade shows” is defined by O.C.G.A. 48-13-50.2 as “...planning, conducting, or participating in **programs of information and publicity** designed to attract or advertise tourism, conventions, or trade shows” (emphasis added). (*See Supplemental Document 3*)

This definition is clear in that expenditures are specifically restricted to activities resulting in **programs of information and publicity**. This would preclude expenditures for infrastructure and such city services as the installation and maintenance of street/ramp lighting.

In a letter dated July 15, 2005 from the city’s attorney, Eric Gotwalt argues that “the value of the interchange lighting to the promotion of tourism is immeasurable.” (*See Supplemental Document 4*) It would be difficult to argue against this statement. However while such infrastructure installations and related government services very likely benefit the tourism industry, they do not meet the definition under the law of promoting tourism, conventions and trade shows. The restricted funds must be expended on “**programs of information.**” Therefore, expenditures of the restricted hotel/motel tax revenue for ramp/street lighting and related maintenance are ineligible.

Stand Up For America Day Expenditures

This part of the complaint questions the chamber’s annual donation of \$15,000 (to the city) from the restricted hotel motel tax revenues given by the city to the chamber. This annual donation is used by the city to cover part of the cost of sponsoring *Stand Up For America Day*, a local one-day celebration which focuses around a parade, and is meant to give citizens a chance to show their patriotism.

A review of the expenditure details provided by the city for years 2003, 2004, and 2005 indicated that the average cost of this was approximately \$26,500, while the amount that possibly met the expenditure eligibility requirements (promotion of tourism, conventions,

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

and trade shows) averaged approximately \$5,872. (*See Supplemental Document 5*) This was expended for print ads, brochures, and radio spots to advertise the event. In his letter the city's attorney argues that the event helps promote tourism and trade within the city of Port Wentworth. This is the same basic argument made about the lighting. However, this argument does not address the requirement that the funds be expended only for "programs of information and publicity." Irrespective of the possible benefit to their tourism industry, only the portion of expenditures made to actually advertise this event could meet the expenditure eligibility requirements.

OTHER COMPLIANCE ISSUES

As discussed in the Summary section above, the complaint focuses primarily on two specific issues. However, as required by House Bill 1415, our review was more comprehensive, addressing not only these specific issues, but also broader issues regarding the city's compliance with related state laws and regulations. This included looking at budget plans and the contractual relationship between the city of Port Wentworth and the Port Wentworth Chamber of Commerce, and examining the specific contracted services, and whether these services met/meet the restrictive definition of promoting tourism, conventions, and trade shows.

City Budget Plan

O.C.G.A. 48-13-51(a)(9)(B) states that a "... a county or municipality imposing a tax ... shall prior to the imposition of the tax ... and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the expenditure requirements of this Code section will be met."

The city's hotel/motel tax budget includes two line items to account for the restricted portions of the hotel/motel tax revenues. (*See Supplemental Document 6*) The first, entitled tourism represents the 33 1/3% that is restricted for the promotion of tourism, conventions, and trade shows. The second, entitled "Trade and Convention Center," represents 16 2/3 % restricted for the support of the regional trade and convention center.

The trade and conventions center expenditures budget line meets the budgetary requirements because the law simply states that this 16 2/3 % must be spent for this very purpose (this expenditure category was not included within the scope of our review). The "tourism" line item would be sufficient if the chamber's budget plan provided the necessary detail and actually demonstrated that the planned expenditures would meet the legal definition of "promotion of tourism conventions and trade shows"

Note that O.C.G.A. 48-13-51(a)(3.2) requires that the city expend the 33 1/3% of the total taxes collected for the purpose of promoting tourism, conventions, and trade shows under a **contract with a private sector nonprofit organization**. This law is being circumvented when the chamber returns \$15,000 (or any amount) to the city to expend.

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

Chamber of Commerce Budget Plan

In addition to the city's budget plan, O.C.G.A. 48-13-51(a)(9)(B) also requires the city to "... obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan."

The chamber's budget comparison (in their 2004 audited financial statements) indicates that the chamber is using hotel/motel tax revenues not only for activities that likely meet the legal expenditure requirements, but also for expenditures that either do not meet the requirements or that only indirectly meet the expenditure requirements. (*See Supplemental Document 7*) As discussed above all of the expenditures relating to the ramp/street lights, and most of the expenditures related to the *Stand Up For America Day* are included in the chamber's budget plan, but fail to meet the expenditure requirements. However, there are other issues that require a closer review.

O.C.G.A. 48-13-51(a)(3.2) requires that the city expend the taxes through "... a contract with a private sector nonprofit organization." As stated above, returning \$15,000 of this revenue each year to the city to expend directly circumvents this law.

The chamber's 2004 audited financial statements indicate that hotel/motel tax contributions from the city provided 97% of the chamber's total financial resources. Also the audited financial statements indicate that 100% of salaries/benefits, depreciation expense, dues/subscriptions, insurance, internet services, general offices expenses, and other expenses are being paid from the hotel/motel tax funds.

While it is reasonable to assume that a portion of these expenditures would be eligible under the hotel/motel tax law, the chamber's activities involve a number of areas other than "programs of information" designed to promote tourism, conventions, and trade shows*. Therefore, the chamber and the city have been expending a substantial portion of the restricted hotel/motel tax revenue for ineligible activities, and some expenditures that might be eligible but apparently have not been properly documented.

Additionally, the chamber has not been spending all of the hotel/motel tax revenues that it receives from the city each year. As of June 30, 2004, they had accumulated a cash and accounts receivable balance (of hotel/motel tax dollars) of \$83,500. (*See Supplemental Document 7*) The chamber is reporting this build up of assets as "permanently restricted."

* The Port Wentworth Chamber of Commerce stated goals are to: 1.) promote, support and strengthen businesses in the community 2.) solicit for and promote new business 3.) **promote tourism in the community** 4.) promote growth of Port Wentworth 5.) work for effective government to facilitate the goals of the Chamber of Commerce and create a viable environment for business interest.

The chamber membership consists of approximately eighty businesses, of which only eight are hotels.

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

However, the interest earned on these restricted funds is being treated as revenue in the unrestricted part of the statement of activities in the chamber's audited financial statements when it should be treated as additional restricted program income.

CORRECTIVE ACTION RECOMMENDATIONS

Opportunity for Review and Comment

On September 9, 2005 DCA provided a copy of our preliminary findings and recommendations to Port Wentworth via certified mail. We invited the City to review the report and to respond with any comments and/or additional information that would help us to more accurately report our findings and recommendations. We received no response from the City of Port Wentworth. However, we did receive a response from the Port Wentworth Chamber of Commerce. (*See Supplemental Document 8*)

In the response from the Chamber, two primary arguments were presented. One involved what was discussed and/or agreed upon by the City, the Chamber, and some of the complainants. However, this discussion has no bearing on whether or not expenditure requirements of the law were actually met. Therefore, this argument is irrelevant.

The second argument in the Chamber's response involved interpretation of the definition of promotion of tourism, conventions, and trade shows under O.C.G.A. 48-13-50.2. The Chamber argued that the Stand Up for America Day Parade itself meets the statutory definition of promoting tourism, conventions, and trade shows. We disagree with this assertion. As stated in the findings, only the portion of expenditures made to actually **advertise** this event could meet the expenditure eligibility requirements. Therefore, our findings and recommendations have not changed.

Background on Hotel Motel Tax Expenditures

Historically there has been much confusion about how local governments could spend the portion of their hotel/motel tax revenues that is restricted for the promotion of tourism, conventions, and trade shows. In this case it can be argued that this misunderstanding contributed to the city of Port Wentworth and the Port Wentworth Chamber of Commerce using these restricted funds for ineligible activities, and not appropriately documenting some expenditures that might otherwise be eligible. Therefore, with the exception of the accumulated unexpended funds in the chamber of commerce's accounts (see last paragraph below), we are not recommending any reimbursements from the chamber to the city, or any transfers of general fund dollars into the hotel/motel tax fund. Instead, the recommendations will focus on corrective actions to help ensure that all future expenditures are made in accordance with state law.

Ramp/Street Lights Expenditures

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

The expenditure of the restricted hotel/motel tax revenues for the ramp/street lighting should cease immediately upon notification of corrective action requirements by the DCA Commissioner. Contracts and/or budgets should be amended to reflect that these expenditures will no longer be paid from the restricted hotel/motel tax revenue. Note that the city may continue to fund these costs from the unrestricted portion of the hotel motel tax revenue.

Stand Up For America Day Expenditures

The expenditure of the restricted hotel/motel tax revenue for this purpose (except for the portion specifically expended to advertise the event) should cease immediately upon notification of corrective action requirements by the DCA Commissioner. Also, as required by law, any hotel/motel revenues to be expended for advertising this event must be expended by a not-for-profit contractor instead of by the city. Contracts and/or budgets should be amended to reflect this corrective action.

City/Chamber of Commerce Budget Plan

The city must require the chamber or any other private nonprofit entity[†] with which it chooses to contract to carry out their promotion of tourism, conventions, and trade shows to submit a budget to the city, prior to the city finalizing its annual budget, which clearly demonstrates how the nonprofit intends to expend the funds in accordance with the law. The budgeted expenditures should include only the cost of activities that will result in specific programs of information designed to promote tourism, conventions, and trade shows.

Any cost that cannot be directly attributable to such activities should be excluded from the private nonprofit's hotel/motel tax budget plan unless the nonprofit organization develops, documents, and implements an appropriate indirect cost allocation plan that provides for only an appropriate percentage of its indirect costs to be included in their hotel\motel tax budget. The indirect cost allocation plan should be consistent with federal cost principles generally applicable to federal grants.

The chamber or any other nonprofit entity with which the city chooses to contract to carry out their promotion of tourism, conventions, and trade shows activities should be required to better plan their activities to ensure that all of the hotel/motel tax revenues are being appropriately expended in a timely manner.

Regarding the accumulated cash and accounts receivable balance (of hotel/motel tax dollars) of \$83,500, the city should require the chamber to return all cash accumulation of hotel motel tax revenue that is not specifically designated for expenditure in the 2006 budget. This cash should be re-budgeted by the city and expended through either an

[†] Considering that 97% of the chamber's operating budget is funded with public funds, it is questionable as to whether or not the chamber should be considered a "private" nonprofit entity.

Department of Community Affairs
City of Port Wentworth Hotel Motel Tax
Complaint Investigation
Report of Findings and Recommendations
Approved by Performance Review Board 10/26/05

amended contract/budget for the promotion of tourism, conventions, and trade shows with the chamber (or any other appropriate nonprofit entity). Additionally, the city should closely review annual audited financial statements of any nonprofit entity with which it contracts to ensure that the funds are being expended, and that the expenditures actually meet the requirements of the law.